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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

JEFF POKORNY AND LARRY BLENN  
on behalf of themselves and those similarly  
situated,

Plaintiffs,

v.

QUIXTAR INC., *et al.*,

Defendants.

**CASE NO. C 07-00201 SC**

**JOINT CASE MANAGEMENT  
STATEMENT AND PROPOSED  
ORDER**

**(LOCAL RULE 16-9)**

Date: April 27, 2007  
Time: 10:00 a.m.  
Court: 1, 17th Floor  
Judge: Honorable Samuel Conti

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1 Plaintiffs Jeff Pokorny and Larry Blenn on behalf of themselves and those similarly  
2 situated and Defendants Quixtar Inc., James Ron Puryear Jr., Georgia Lee Puryear, World Wide  
3 Group, L.L.C., Britt Worldwide L.L.C., American Multimedia Inc., Britt Management, Inc., Bill  
4 Britt and Peggy Britt submit the following Joint Case Management Statement pursuant to Local  
5 Rule 16-9:

6 1. **Jurisdiction and Service.**

7 Plaintiffs Pokorny and Blenn assert claims pursuant to the Racketeer Influenced Corrupt  
8 Organizations Act (“RICO”), 18 U.S.C. §§ 1961-1968. This Court, therefore, has jurisdiction  
9 over this action pursuant to 28 U.S.C. § 1331. Plaintiffs Pokorny and Blenn assert state law  
10 claims under the California Business and Professions Code and allege that this Court may  
11 exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367. All Defendants have been  
12 properly served with process. Plaintiffs assert venue is proper in this District pursuant to  
13 28 U.S.C. § 1391(b) and (c) and 18 U.S.C. § 1965(a) and (b). Defendants Ron and Georgia Lee  
14 Puryear and World Wide Group, LLC reserve the right to assert personal jurisdiction and venue  
15 over them is improper in this Court due to agreements between the parties, which will be the  
16 subject of further pleading as necessary. The remaining Defendants do not contest that venue is  
17 proper in this district as to Plaintiffs’ First Claim for Relief. Defendants assert that venue is not  
18 properly laid in this Court as to the remaining claims for relief inasmuch as Plaintiffs  
19 contractually agreed to resolve any dispute with Defendants through the Quixtar ADR process.

20 2. **Facts.**

21 ***Plaintiffs’ position.*** Plaintiffs are victims of an illegal pyramid scheme operated and  
22 controlled by the Defendants. Plaintiffs therefore seek damages and injunctive relief for  
23 themselves and all similarly situated individuals. Plaintiffs were recruited to join the illegal  
24 pyramid scheme by becoming Quixtar distributors and to purchase Quixtar’s products and related  
25 “tools and functions” materials sold by the Defendants. Rather than a legitimate multi-level sales  
26 organization, which focuses on sales to retail customers, the Defendants’ scheme victimized  
27 “distributors” because it is focused on recruitment and not retail sales. Contrary to Defendants’  
28 assertion, Quixtar violates or ignores the rules cited by the Federal Trade Commission as the basis

1 for its 1979 decision that Amway (Quixtar's predecessor) was not a pyramid scheme. Count One  
 2 of the Complaint addresses the veritable gauntlet of conciliation and arbitration steps that Quixtar  
 3 seeks to impose, and alleges that these are unenforceable as inapplicable, futile and  
 4 unconscionable.

5 ***Defendants' position.*** Plaintiffs Pokorny and Blenn each agreed, on multiple occasions,  
 6 to resolve all of the claims they assert in this action through alternative dispute resolution. On  
 7 March 5, 2007, the Defendants filed separate, respective Motions to Dismiss or Stay and Compel  
 8 Compliance with Dispute Resolution Agreement. This Court should decide these motions as a  
 9 threshold matter. As to Plaintiffs' factual contention that Defendants are engaged in an unlawful  
 10 "pyramid" scheme, the Federal Trade Commission (FTC) explicitly rejected this claim. After an  
 11 exhaustive four-year investigation and trial, that FTC held "[t]he Amway Sales and Marketing  
 12 Plan is not a pyramid plan." *In the Matter of Amway Corp.*, 93 F.T.C. 618, 706 (1979). Indeed,  
 13 the key attributes of Quixtar's business model that Plaintiffs Pokorny and Blenn now cite as  
 14 indicia of a "pyramid" scheme are the very things the FTC investigated and found lawful. *Id.* at  
 15 711. In any event, Defendants' position on the facts will be developed in the Quixtar dispute  
 16 resolution process as required by the parties' agreements.

### 17 3. Legal issues.

18 Plaintiffs' Complaint frames the following disputed points of law: (1) whether Quixtar's  
 19 arbitration provision is inapplicable, futile and procedurally and substantively unconscionable;  
 20 (2) whether the Defendants constitute an "enterprise" as defined in 18 U.S.C. § 1961; (3) whether  
 21 Defendants conducted the alleged racketeering activity through a "pattern"; (4) whether  
 22 Defendants are distinct from the alleged "enterprise"; (5) whether the pattern of alleged  
 23 racketeering activity is distinct from the alleged "enterprise"; (6) more generally, whether  
 24 Plaintiffs meet the statutory and common law requirements for a claim under RICO, 18 U.S.C.  
 25 §§ 1961-1968; (7) whether Plaintiffs have pled a pattern of racketeering activity with particularity  
 26 consistent with Rule 9(b); (8) whether Defendants are engaged in an illegal pyramid scheme or  
 27 "endless chain" as defined under California Penal Code § 327; (9) whether Defendants are  
 28 engaged in unfair or fraudulent business acts or practices and unfair, deceptive, untrue and

misleading advertising within the meaning of California Business and Professions Code § 17200; (10) whether Defendants' business practices are "unlawful" "unfair" or "fraudulent" under Business and Professions Code § 17200; (11) whether Defendants' acts, advertisements, and alleged omissions constitute unfair trade practices and false advertising in violation of California Business and Professions Code § 17500; and (12) whether this action may be brought by Plaintiffs as a class action under Federal Rules of Civil Procedure 23.

Defendant Quixtar's Counterclaim raises two narrow legal issues: (1) whether the conciliation procedure in the Quixtar dispute resolution provision creates a condition precedent that has not been satisfied, and (2) whether the Quixtar dispute resolution provision is valid and enforceable under Title 9, United States Code, Section 2 of the Federal Arbitration Act. Defendants contend that these are the only legal issues properly before this Court. *Nagrampa v. Mailcoups, Inc.*, 469 F. 3d 1257 (9th Cir. 2006).

#### 4. **Motions.**

Defendants have filed Motions to Dismiss or Stay and Compel Compliance with Dispute Resolution Agreement, to be heard on April 27, 2007. Defendants submit that until such time as these threshold motions are heard, it is premature to evaluate whether there will be further motion practice before this Court. Plaintiffs submit that these Motions can and should be denied based on the undisputed facts concerning the operation of the dispute resolution provisions at issue. In the alternative, Plaintiffs submit that these Motions should be deferred until discovery is conducted with respect to the enforceability of conciliation and arbitration process, which are the subject of Count One of Plaintiffs' Complaint and the Quixtar Counterclaims.

If Defendants prevail on the pending motions to compel arbitration and the Court stays or dismisses this case, there will be no further activity in this Court at this time. Defendants propose that, if they do not prevail on their motions, the parties return to this Court within 60 days of this Court's ruling on the motion for a further status conference. Plaintiffs believe the Court should set a pre-trial schedule at this time, and attach hereto a proposed schedule that provides for a threshold litigation of the motion to compel arbitration and for the subsequent merits litigation of the claims. Plaintiffs anticipate moving for class certification as set forth below and for summary

1 judgment at the appropriate time. Defendants do not believe a schedule is necessary at this time  
 2 due to the pending motions to compel arbitration, but have joined with Plaintiffs in offering a  
 3 Proposed Case Schedule in the event this Court elects to set a schedule. (*See* attached,  
 4 Exhibit A.) If this Court denies Defendants' Motions to Dismiss or Stay and Compel Compliance  
 5 with Dispute Resolution Agreement, Defendants anticipate moving to dismiss under Rule 12 and  
 6 moving for summary judgment.

7           **5. Amendment of Pleadings.**

8           ***Plaintiffs' position.*** Plaintiffs do not currently expect to amend to add parties or claims.  
 9 However, they reserve their right to do so as discovery progresses and propose that the deadline  
 10 for amendment of pleadings to add parties or claims be December 31, 2007.

11           ***Defendants' position.*** Defendant Quixtar filed its Answer and Counterclaim on  
 12 March 22, 2007. The other Defendants have not yet answered. All Defendants joined defendant  
 13 Quixtar's pending Motion to Dismiss or Stay and Compel Compliance with Dispute Resolution  
 14 Procedure on March 5, 2007. Until such time as these threshold motions are heard, it is  
 15 premature to evaluate whether any amendment of answers, or defenses are expected.

16           **6. Evidence Preservation.**

17           ***Plaintiffs' position.*** Plaintiffs have taken the following steps to preserve evidence: The  
 18 Plaintiffs have collected all hard copy and electronic documents within their possession, custody  
 19 and control and have provided those original documents to counsel of record. In addition, the  
 20 Plaintiffs have been instructed to preserve all computer hardware and other electronic means used  
 21 in communicating with the Defendants.

22           ***Defendants' position.*** Defendants Quixtar, Britt Worldwide, L.L.C., American  
 23 Multimedia Inc., Britt Management, Inc., Bill and Peggy Britt, World Wide Group LLC, and Ron  
 24 and Georgia Lee Puryear have taken steps to preserve evidence reasonably related to issues  
 25 reasonably evident in this action, including the preservation of electronically recorded material  
 26 and the suspension of any document destruction or electronic erasure programs.

1           7.       **Disclosures.**

2           ***Plaintiffs' position.*** Plaintiffs will comply with the disclosure requirements of Rule 26 on  
 3 May 14, 2007. Plaintiffs disagree with Defendants' position that "disclosures are premature."  
 4 With respect to discovery, Plaintiffs' position is set forth under Item No. 8 below.

5           ***Defendants' position.*** Disclosures are premature in view of the pending Motions to  
 6 Dismiss or Stay and Compel Compliance with Dispute Resolution Agreement. Discovery is  
 7 permitted under the Federal Arbitration Act only to discern whether there was an agreement at  
 8 all—not whether the agreement is unconscionable. Accordingly, Defendants submit that they are  
 9 not subject to the disclosure obligations of this Court until such time as this Court determines, as  
 10 a threshold matter, that the matter will be heard in this Court and that the Quixtar dispute  
 11 resolution process is both procedurally and substantively unconscionable.

12           8.       **Discovery.**

13           ***Plaintiffs' position.*** There has been no discovery taken to date. While Plaintiffs have  
 14 provided in the attached proposed schedule that merits and expert discovery should only  
 15 commence after a denial of Defendants' motion to dismiss, Plaintiffs disagree with Defendants'  
 16 assertion that the only discovery permissible prior to the resolution of their motions to compel  
 17 arbitration is as to whether an arbitration agreement exists and not as to whether any such  
 18 agreement is unconscionable. Issues as to the validity of an arbitration provision itself are to be  
 19 decided by the court and discovery relevant to whether the arbitration provision is unconscionable  
 20 is appropriate in response to the motion to compel arbitration, as well as to Count One of  
 21 Plaintiffs' Complaint and the Quixtar Counterclaim. Courts have also allowed discovery  
 22 concerning the nature of an ADR process and Defendants have raised factual issues that estop  
 23 them from opposing discovery on the issue of the arbitration provision. Specifically, Quixtar  
 24 asserts that its conciliation process has a "success rate of 80%." (Quixtar reply at 1.) Plaintiffs are  
 25 also entitled to discovery regarding Defendants' other assertions that its conciliation process is  
 26 applicable to claims that challenge the legality of the very Plan and Rules of Conduct that the  
 27 conciliation process is expressly directed to enforce. As Defendants concede, plaintiff Blenn is  
 28 entitled to discovery on the issue of whether he entered into an arbitration agreement at all



1           ***Defendants’ position.*** Defendants submit that no discovery should proceed prior to the  
 2 Court’s determination of the Motions to Dismiss or Stay and Compel Compliance with Dispute  
 3 Resolution Agreement. Discovery is permitted under the Federal Arbitration Act only to discern  
 4 whether there was an agreement at all —*not* whether the agreement is unconscionable.

5           9.       **Class Action.**

6           ***Plaintiffs’ position.*** Plaintiffs intend to file their motion to certify a class immediately,  
 7 after a period of discovery relating to class certification issues. Plaintiffs agree that the class  
 8 certification discovery and briefing should await ruling on Defendants’ motions to compel  
 9 arbitration.

10          In accordance with Local Rule 16-9 Plaintiffs further provide as follows:

11          Plaintiffs contend that this action is maintainable as a class action under Federal Rule of  
 12 Civil Procedure 23(a) and 23(b) (1) and (3). Plaintiffs seek relief on behalf of themselves and a  
 13 nationwide class of all persons who were Quixtar distributors from January 2003 until the present  
 14 and who were injured as a result of Defendants’ illegal pyramid scheme (the “class”). Excluded  
 15 from the class are the Defendants, their employees, family members and affiliates. Plaintiffs also  
 16 seek relief on behalf of a subclass from the California state law claims, which includes all persons  
 17 who are members of the class and who were or are Quixtar distributors resident in California (the  
 18 “subclass”). The members of the class and the subclass number in the thousands and joinder of  
 19 all Class members in a single action is impracticable. There are questions of law and/or fact  
 20 common to the class and subclass, including but not limited to:

21          (a)       Whether Defendants were operating an unlawful pyramid scheme;

22          (b)       Whether distributors paid money to Defendants in exchange for (1) the right to sell  
 23 a product and (2) the right to receive, in return for recruiting others in to the program, rewards  
 24 which were unrelated to the sale of the product to retail consumers;

25          (c)       Whether distributors were required to make an investment into the pyramid  
 26 scheme;

27          (d)       Whether Defendants enforced the 70% rule;

28          (e)       Whether Defendants enforced the buy-back rule;

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- 1 (f) Whether Defendants enforced the ten customer rule;
- 2 (g) Whether Defendants' conduct constitutes an "Endless Chain" under the California  
3 Penal Code;
- 4 (h) Whether Defendants omitted to inform Plaintiffs and the plaintiff class that they  
5 were entering into an illegal pyramid scheme where the overwhelming majority of participants  
6 lose money;
- 7 (i) Whether Defendants engaged in acts of mail and/or wire fraud in direct violation  
8 of RICO;
- 9 (j) Whether and to what extent the conduct has caused injury to the plaintiff and the  
10 plaintiff class;
- 11 (k) Whether Defendants' conduct constitutes an unlawful, unfair and fraudulent  
12 business practice under the California Business and Professions Code; and
- 13 (l) Whether Defendants' conduct constitutes false advertising under the California  
14 Business and Professions Code.

15 These and other questions of law and/or fact are common to the class and the subclass,  
16 and predominate over any question affecting only individual class members. The Plaintiffs'  
17 claims are typical of the claims of the class and the subclass in that Plaintiffs were distributors for  
18 Quixtar and lost money as a result of the pyramid scheme. The Plaintiffs will fairly and  
19 adequately represent the interests of the class and the subclass in that Plaintiffs' claims are typical  
20 of those of the class and Plaintiffs' interests are fully aligned with those of the class. The  
21 Plaintiffs have retained counsel who is experienced and skilled in complex class action litigation.  
22 Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication  
23 of the controversy alleged herein, because such treatment will permit a large number of similarly-  
24 situated persons to prosecute their common claims in a single forum simultaneously, efficiently  
25 and without unnecessary duplication of evidence, effort, and expense that numerous individual  
26 actions would engender. The Plaintiffs know of no difficulty likely to be encountered in the  
27 management of this action that would preclude its maintenance as a class action.

28

1 Plaintiffs contend that to the extent there is a disagreement as to the scope of class  
2 discovery, that issue will be decided on the motions raised at the appropriate time.

3 ***Defendants' position.*** Defendants deny the averments of the Complaint allege a sufficient  
4 basis for a class action. Defendants believe that until the Court rules on the pending Motions to  
5 Dismiss or Stay and Compel Compliance with Dispute Resolution Agreement, it is premature to  
6 address the procedure for addressing Plaintiffs' request for certification of a class. The proposed  
7 case schedules that are attached, which contemplate a bifurcation between merits and class  
8 discovery, assume a relatively limited scope as to the class issues and further assume that the  
9 parties have reached a common understanding about scope. For example, Defendants contend  
10 that discovery as to many of these categories is wholly inappropriate for class certification. But  
11 there is a trade-off between scope and time. If it should happen that the parties cannot agree and  
12 that the scope gets broadened substantially, Defendants reserve the right to seek relief from the  
13 Court so as to modify the schedule.

14 10. **Related Cases.**

15 ***Plaintiffs' position.*** Not applicable.

16 ***Defendants' position.*** Not applicable.

17 11. **Relief.**

18 Plaintiffs' Complaint seeks the following relief: (1) judgment declaring Quixtar's  
19 arbitration provision unconscionable and unenforceable; (2) certification of an appropriate class  
20 or classes of Plaintiffs; (3) a jury trial and judgment against Defendants; (4) damages in an  
21 amount of the named Plaintiffs' and the class' injury as a result of Defendants' conduct and for  
22 injury to their business and property, all as a result of Defendants' violations of § 1964(a), (c) and  
23 (d) and that such sum be trebled in accordance with 18 U.S.C. § 1964(c); (5) restitution and  
24 disgorgement of monies, pursuant to the California Business and Professions Code; (6) the cost of  
25 suit including reasonable attorney fees in accordance with 18 U.S.C. § 1964(c); (7) general  
26 compensatory and exemplary damages in an amount yet to be ascertained; and (8) such other  
27 damages, relief, and pre- and post-judgment interest as the Court may deem just and proper.  
28

Defendant Quixtar's Counterclaim seeks the following relief: (1) an order declaring that Pokorny and Blenn are bound by the terms of the Quixtar registration agreement, that the Quixtar agreement is enforceable by Quixtar against Pokorny and Blenn, and that Pokorny and Blenn must comply with the Quixtar arbitration process pursuant to section 4 of the Federal Arbitration Act; (2) an order dismissing Plaintiffs' case or, in the alternative, staying proceedings in the case pending the outcome of conciliation or arbitration; (3) a judgment declaring that the Quixtar ADR Agreement is valid and enforceable against Plaintiffs; and (4) an order awarding Quixtar its costs and attorneys' fees necessitated by Plaintiffs' refusal to participate in conciliation or arbitration, together with any other relief this Court deems equitable and just.

**12. Settlement and ADR.**

The parties have filed their ADR Certification Forms pursuant to Local Rule 16-8(b). As the parties are unable to agree on the need for or form of Court-sponsored ADR, the parties have requested an ADR Telephone Conference pursuant to Local Rule 16-8(c)(2), which will occur on a date to be set by the Court's ADR Unit.

***Plaintiffs' position.*** Plaintiffs deny that they have agreed to the ADR process urged by defendants, that the ADR process imposed by the Defendants on some of the plaintiff class is consistent with the ADR envisioned by this Court as fair and neutral, and that the ADR process urged by the Defendants is legal. Plaintiffs will agree to the following ADR process: Mediation in accordance with Local ADR Rule 6-1.

***Defendants' position.*** The parties have contractually agreed to an ADR process, that Defendants are willing to follow, but that Plaintiffs have ignored.

**13. Consent to Magistrate Judge for All Purposes.**

On February 8, 2007, defendant Quixtar timely filed a declination to proceed with a Magistrate Judge. On February 9, 2007, Plaintiffs timely filed their consent to proceed with a Magistrate Judge.

**14. Other References.**

***Plaintiffs' position.*** This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

1           ***Defendants' position.*** This case is suitable for, and subject to, conciliation and, if  
 2 necessary, binding arbitration under the Quixtar ADR Agreement.

3           15.     **Narrowing of Issues.**

4           ***Plaintiffs' position.*** Plaintiffs agree that the Court should at the threshold resolve the  
 5 motions to compel arbitration, after allowing discovery on the issues raised by the motions if it  
 6 determines it cannot deny the motions on the parties' submissions. Because Defendants are of the  
 7 view that proceedings other than those related to their motions to dismiss are premature, the  
 8 parties can address ways to narrow the issues after the motions are resolved.

9           ***Defendants' position.*** This Court is asked to decide as a threshold matter the pending  
 10 motions to dismiss. Defendants ask the Court to hold that the Quixtar conciliation process  
 11 establishes a condition precedent that must be satisfied before Plaintiffs can proceed, and to either  
 12 dismiss the Complaint or, if the Court were to find the conciliation procedure unenforceable,  
 13 compel Plaintiffs to comply with the Quixtar arbitration process. The Court should stay all  
 14 further litigation pending the outcome of conciliation and arbitration.

15           16.     **Expedited Schedule.**

16           ***Plaintiffs' position.*** At this time, Plaintiffs do not believe this is the type of case that can  
 17 be handled on an expedited basis with streamlined procedures, but may wish to request that the  
 18 Court consider such procedures in the future.

19           ***Defendants' position.*** Subject to this Court's determination of the Motions to Dismiss or  
 20 Stay and Compel Compliance with Dispute Resolution Agreement, this is not the type of case that  
 21 can be handled on an expedited basis with streamlined procedures.

22           17.     **Scheduling.**

23           ***Plaintiffs' position.*** Plaintiffs believe that the Court should adopt a pre-trial schedule,  
 24 including for proceedings related to the motions to compel arbitration. Attached as Exhibit A is a  
 25 copy of the parties' joint Proposed Case Schedule.

26           ***Defendants' position.*** Defendants' Motions to Dismiss or Stay and Compel Compliance  
 27 with Dispute Resolution Agreement are scheduled for hearing on April 27, 2007. Defendants  
 28 suggest that approximately 60 days from the date that the Court rules on Defendants' motions,  
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1 this Court schedule a new case management conference for the setting of dates, if necessary.  
 2 Defendants do not believe that the Court should adopt a pre-trial schedule at this time due to the  
 3 pending motions to compel arbitration, but have joined with Plaintiffs in offering a Proposed Case  
 4 Schedule in the event this Court elects to set a schedule.

5           18.     **Trial.**

6           Plaintiffs have demanded a jury as provided under Rule 38(a) of the Federal Rules of Civil  
 7 Procedure.

8           ***Plaintiffs' position.*** Plaintiffs believe the trial of this case (witness testimony only) before  
 9 a jury will take approximately three weeks.

10          ***Defendants' position.*** Plaintiffs' First, Fifth, and Sixth Claim for Relief are not subject to  
 11 trial by jury. At this early juncture it is not possible to reasonably estimate the length of trial.  
 12 The parties do not know whether the pending motions to dismiss will be granted. Moreover, even  
 13 assuming Defendants' motions are denied, the parties do not know which, if any, claims will  
 14 remain after Defendants' anticipated Rule 12 motions and motions for summary judgment. It is  
 15 also not known at this time, assuming this case proceeds in this Court, whether the motion for  
 16 class certification will be granted.

17           19.     **Disclosure of Non-party Interested Entities or Persons.**

18          On March 1, 2007, Quixtar filed its Certification of Interested Entities or Persons  
 19 identifying that Quixtar is an indirect subsidiary of Alticor Inc. On March 2, 2007, Plaintiffs  
 20 Pokorny and Blenn filed their certification disclosing that they have no such interest to report. On  
 21 March 29, 2007, the Britt Defendants filed their Certification of Interested Entities or Persons  
 22 disclosing that Defendants Bill and Peggy Britt have financial interests of at least 10% in  
 23 defendant entities Britt Worldwide, L.L.C., American Multimedia Inc., and Britt Management,  
 24 Inc. The remaining Defendants have not yet filed their certifications.

25 Dated: April 20, 2007

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